

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

SUNBELT RENTALS, INC.,)	
)	
Plaintiff)	
)	
v.)	Civil No. 00-363-P-H
)	
DOUGLAS CORBRIDGE d/b/a)	
EAST COAST CONSTRUCTION CO.)	
or D.C. & SONS BUILDERS,)	
)	
Defendant)	

**RECOMMENDED DECISION ON PLAINTIFF’S MOTION
FOR SUMMARY JUDGMENT**

Plaintiff Sunbelt Rentals, Inc. (“Sunbelt”) moves for summary judgment as to Count III of its complaint against *pro se* defendant Douglas Corbridge. Plaintiff’s Motion for Summary Judgment (“Motion”) (Docket No. 16) at 1. I recommend that the Motion, which is unopposed, be denied on the ground of significant non-compliance with Local Rule 56.

I. Discussion

“The failure of the nonmoving party to respond to a summary judgment motion does not in itself justify summary judgment.” *Lopez v. Corporaci?n Azucarera de Puerto Rico*, 938 F.2d 1510, 1517 (1st Cir.1991). “Rather, before granting an unopposed summary judgment motion, the court must inquire whether the moving party has met its burden to demonstrate undisputed facts entitling it to summary judgment as a matter of law.” *Id.* (citations, internal quotation marks and brackets omitted).

The majority of the facts proffered by Sunbelt are not cognizable on summary judgment pursuant to Local Rule 56. That rule requires *inter alia* that a party moving for summary judgment submit a statement of material facts in which “[e]ach fact asserted . . . shall be supported by a record citation as required by

subsection (e) of this rule.” Loc. R. 56(b). Subsection (e) in turn requires that each fact “be followed by a citation to the specific page or paragraph of identified record material supporting the assertion.” Loc. R. 56(e). The phrase “record material” alludes to documents cognizable on summary judgment pursuant to Federal Rule of Civil Procedure 56 – “the pleadings, depositions, answers to interrogatories, and admissions on file, together with . . . affidavits, if any[.]” Fed. R. Civ. P. 56(c). Facts are “deemed admitted unless properly controverted” – provided that they are “supported by record citations as required by this rule[.]” Loc. R. 56(e).

A number of Sunbelt’s assertions of fact are unsupported and thus cannot be deemed admitted, including those that:

1. Are unaccompanied by any citation. *See* Statement of Material Facts in Support of Plaintiff’s Motion for Summary Judgment (“SMF”) (Docket No. 17) ¶ 7.

2. Cite only to an unrelated legal brief. *See id.* ¶ 11; Motion for Assessment of Damages (Docket No. 10) at 8.

3. Cite only to an unverified complaint, the allegations of which primarily are denied in the answer. *See* SMF ¶¶ 1-4; Complaint (Docket No. 1) ¶¶ 9, 23-28; Answer to Complaint (Docket No. 14).

4. Cite to a supporting document the relevant portion of which is illegible. *See* SMF ¶ 5; Agreement, attached as Exh. A to Complaint, at 2.

5. Cite to documents that do not fully support the substantive points made. For example, in support of the proposition that Corbridge wrote Sunbelt “admitting he owes Sunbelt for sums due under the Agreement,” SMF ¶ 9, Sunbelt cites a letter in which Corbridge states, “yes, this Company owes Sunbelt for the time this equipment was leased, and for a few flat tires that they fixed for us,” and “I would be happy to pay them [Sunbelt] for their timed lease, but nothing else,” Letter dated November 16, 2000 from [Douglas Corbridge], East Coast Construction Company, to Douglas W. Clapp Attorney, attached as Exh. D to Memorandum of Law in Support of Plaintiff’s Motion for Summary Judgment (Docket No. 16), at 2. The rub is that Sunbelt construes sums due under the agreement to include not only monies owing pursuant to the

original rental term but also rent accruing from the time equipment is stolen or lost until such time as it is paid in full or recovered, as well as attorney fees and other collection costs. *See, e.g.*, SMF ¶¶ 5-6. The Corbridge letter is not tantamount to an admission that he owes those sums as well.¹

As a result of its significant transgression of the requirements of Local Rule 56, Sunbelt fails to carry the burden that exists even in the context of an unopposed motion for summary judgment to adduce undisputed facts entitling it to judgment as a matter of law.²

II. Conclusion

For the foregoing reasons, I recommend that the Motion be **DENIED**.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated this 6th day of August, 2001.

David M. Cohen
United States Magistrate Judge

TRLIST STNDRD

U.S. District Court

¹ Sunbelt also neglects in certain instances to provide pinpoint citations, *see* SMF ¶¶ 13-14, or to identify the location of supporting documents, *see* SMF ¶¶ 9, 13.

² I note in addition that some of Sunbelt's documents appear to be vulnerable to attack on evidentiary grounds; for example, the Agreement neither is authenticated nor appears to be self-authenticating pursuant to Federal Rule of Evidence 902. However, in this context, as at trial, evidence is not excluded on this ground in the absence of objection.

District of Maine (Portland)

CIVIL DOCKET FOR CASE #: 00-CV-363

SUNBELT RENTALS INC v. CORBRIDGE Filed: 11/14/00
Assigned to: JUDGE D. BROCK HORNBY
Demand: \$125,000 Nature of Suit: 470
Lead Docket: None Jurisdiction: Federal Question
Dkt# in other court: None

Cause: 18:1961 Racketeering (RICO) Act

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